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FIREMAN'S FUND vs. ONEBEACON INSURANCE

April 02, 2015

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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FIREMAN'S FUND INSURANCE COMPANY,

Plaintiff,

vs. Case No. 14 CV 4718

ONEBEACON INSURANCE COMPANY as
successor-in-interest to
GENERAL ACCIDENT INSURANCE
COMPANY OF AMERICA,

Defendant.
-----x

JEFFREY ARNOLD SVETSKA

New York, New York

Thursday, April 2, 2015

Reported by: Steven Neil Cohen, RPR
Job No. 309213

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2 2 please.

3 Have you seen the document that
4 has been marked as Exhibit 2 which is
5 "Plaintiff's Responses and Objections to
6 Notice of Rule 30(b)(6) Deposition of
7 Fireman's Fund Insurance Company"?

8 A. This is the first time I have seen
9 this.

10 Q. You are aware that you have been
11 designated as a company representative with
12 respect to a number of the items that were
13 set forth in Exhibit 1 which you had
14 previously seen?

15 A. I am aware of that.

16 Q. Let me have you look at -- stay
17 with Exhibit 2 and look at topics number 1,
18 2, 3, well, stick with that, 1 through 3.

19 Do you see that?

20 A. Yes, I have it in front of me
21 these topics numbers 1, 2 and 3.

22 Q. Topics 1 through 3 relate to the
23 three Fireman's Fund policies that were at
24 issue in the ASARCO declaratory judgment
25 action.

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2 Do you see that?

3 A. Yes.

4 Q. And each of these items number 1
5 through 3 the responses on behalf of
6 Fireman's Fund indicate that you are
7 designated to respond concerning
8 insurance-related topics as identified in --
9 the reinsurance-related topics as identified
10 in those items 1 through 3.

11 Do you see that?

12 A. Well, technically I don't see my
13 name specifically laid out in regards to
14 this as it relates to Exhibit, Defendant's
15 Exhibit 1, but I am here today to talk about
16 certain aspects of 1, 2 and 3.

17 Q. Okay. Just let me direct you just
18 so you see at Exhibit Number 2 topics
19 numbers 1, 2 and 3 all refer specifically to
20 you as the person responding.

21 Do you see that?

22 A. Oh, specifically to
23 reinsurance-related issues, yes, I am sorry.
24 I may have missed that.

25 Q. What did you do to prepare for



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2 Let me ask you to look at Exhibit
3 17 please.

4 A. Okay. I have it.

5 Q. Exhibit 17 is what I believe what
6 we refer to as a cover note showing the
7 coverage that was effective for the 19 on --
8 the March -- strike that.

9 The March 15, 1982 through 1983
10 policy period, this shows the facultative
11 coverage that was affected on behalf of
12 ASARCO, do you understand that to be true?

13 A. It is labeled "cover note" and it
14 does say that "We hereby certify that we
15 have bound the following facultative
16 reinsurance on your behalf."

17 Q. Is a cover note a document that
18 you are familiar with?

19 A. Yes.

20 Q. And does it show the coverage that
21 has been affected on behalf of the reinsured
22 by the broker?

23 A. This particular document does not
24 seem to contain -- hang on. Let me rephrase
25 that.

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2 This is a -- I believe this is a
3 basic representation of the reinsurance that
4 this particular broker has placed, yes.

5 Q. This is for the policy layer of
6 \$20 million excess of \$30 million excess of
7 a \$3 million self-insured retention,
8 correct?

9 A. That is what this document says,
10 yes.

11 Q. It shows a \$3,000 gross annual per
12 million premium. Do you understand that is
13 the rate -- I am sorry, that is the premium
14 that was paid for this layer of reinsurance?

15 A. Or you could call it a rate, yes.

16 Q. Or rate.

17 Now, we don't have -- strike that.

18 Let me ask you to look at the next
19 document which is Exhibit 18.

20 A. Okay. I have 18.

21 Q. Exhibit 18, is that also a cover
22 note?

23 A. Yes.

24 Q. So this cover note if I am correct
25 is for the period March 15, 1983 to

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2 March 15, 1984, correct?

3 A. That is what it says, yes.

4 Q. So that is for the subsequent
5 policy year, in other words this is
6 reinsurance of the Fireman's Fund policy in
7 effect for the 1983 to 1984 period, correct?

8 A. For a policy of Fireman's Fund for
9 the period March 15, 1983 to '84.

10 Q. Do you understand this to be with
11 respect to the excess policy that was
12 written by Fireman's Fund at 20 million
13 excess of 75 million?

14 A. Yes.

15 Q. Now, the gross or the premium on
16 this one was \$1,500, correct?

17 A. It says, "The reinsurance premium
18 \$1,500 gross annual per million."

19 Q. "Per million."

20 Now, looking back at the other
21 prior cover note that was for the prior
22 year.

23 Do you see that?

24 A. Exhibit 17.

25 Q. Exhibit 17. That is the lower

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2 layer cover for the prior year, correct?

3 A. Yes.

4 Q. Okay. And that is the layer of
5 reinsurance that attached to the policy that
6 was written at \$20 million excess of
7 \$30 million, correct?

8 A. Yes. Exhibit 17 is the cover note
9 for a 1982 to 1983 reinsurance program
10 20 million excess of 30.

11 Q. Now the rate on the lower level
12 and I apologize, I don't believe we have the
13 cover note for the 1983-1984 year for the
14 policy that was written at \$20 million
15 excess of \$30 million, but my question to
16 you is do you have an understanding as to
17 why the rate on the higher level policy as
18 shown in Exhibit 18 is lower than the rate
19 on the policy that is shown or the
20 reinsurance shown at Exhibit 17?

21 A. I have an understanding of why
22 that would be, yes.

23 Q. Why is that?

24 A. With an attachment point
25 significantly higher relative to dollar 1

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2 the chance of loss is less for a higher
3 attaching policy therefore it would have a
4 lower premium rate.

5 Q. So it has a lower exposure,
6 correct?

7 A. Yes.

8 Q. That reflects the fact that at
9 least for the -- strike that.

10 That reflects the fact that for
11 the 1983 to '84 policy which is written
12 excess of \$75 million or actually 78 if you
13 count the self-insured retention there has
14 to be at least \$78 million of loss that is
15 covered under the underlying policies before
16 this policy responds and the reinsurance
17 certificate responds, correct?

18 MS. BASWELL: Objection to form.

19 THE WITNESS: Yes, I was going
20 to ask you if you can repeat that
21 back.

22 MR. KING: See if you can read
23 that back.

24 (Record read)

25 MS. BASWELL: Objection to form.

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2 THE WITNESS: We may have to
3 back up two questions because when you
4 are saying "that" are you referring to
5 the difference in premium or the
6 premium itself?

7 BY MR. KING:

8 Q. The difference in the premium.
9 The premium for the lower level
10 policy is half that of the premium for the
11 higher level policy, correct, based on what
12 we have seen?

13 MS. BASWELL: Objection.

14 THE WITNESS: The premium for
15 the lower level policy that attaches
16 excess of 30 is actually twice as high
17 as the --

18 BY MR. KING:

19 Q. You are right.

20 A. -- the premium for the excess 75
21 and we discussed -- and if the question
22 relates to why that is it is because it is a
23 lower exposure than the policy attaching
24 excess of 30.

25 Q. Thank you.

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review it?

A. Yesterday.

Q. So this certificate is a
certificate of reinsurance in effect from
March 15, 1983 to March 15, 1984, correct?

A. That is what is stated on the
declaration page, yes.

Q. When you say declarations page you
mean the first page that we are looking at
here, correct?

A. Page 1 of Exhibit 19, yes. Sorry,
I will be more specific.

Q. Well, we can agree that this is
generally referred to as a declarations
page.

A. Sure.

Q. Even though this one is not
referred to?

A. Doesn't have the title of that,
yes, yes, we can agree to that.

Q. And this facultative certificate
provides \$3 million part of \$20 million
excess of \$75 million excess of underlying.

Do you see that?

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2 A. Yes.

3 Q. So this reinsurance doesn't attach
4 to and there are no obligations under this
5 reinsurance agreement until there is an
6 underlying loss of at least \$78 million,
7 correct, subject to the terms and conditions
8 of the certificate?

9 MS. BASWELL: Objection to form.

10 THE WITNESS: How would you
11 define "loss"?

12 THE WITNESS:

13 BY MR. KING:

14 Q. We will talk about that further in
15 a minute.

16 You agree that this doesn't attach
17 until there has been -- let's get back to
18 that in a minute.

19 Let me ask you to turn to the next
20 page. You see paragraph 1 there at the top?

21 A. Yes.

22 Q. Okay. Now this one is not -- this
23 page is not captioned can we agree this is
24 frequently referred to as a terms and
25 conditions page?

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A. I think earlier we were calling it a provisions or conditions but we can use terms and conditions, is that what you said?

Q. Right.

A. We can call it whatever we want. We are looking at page 2, sure.

Q. We spoke earlier, we spoke earlier today that you would -- and you said you would look at the conditions or provisions of the policy to determine what the coverage would be.

Is this the type of page you were talking about?

A. Exactly, yes.

Q. It states in paragraph 1, "The company warrants to retain for its own account," and the company there was Fireman's Fund?

A. I believe that is the meaning, yes.

Q. "Subject to treaty reinsurance the amount of liability specified in Section 3 and the liability of the reinsurers specified in Section 4 shall follow that of

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2 the company and accept as otherwise
3 specifically provided herein shall be
4 subject in all respects to all the terms and
5 conditions of the company's policy."

6 Do you see that?

7 A. I see where it says that, yes.

8 Q. Do you understand that to be a
9 following form provision?

10 A. I am sorry. I am re-reading it
11 again.

12 When you use the term "following
13 form," the wording would generally speak for
14 itself but where it says "shall follow that
15 of the company" even though we haven't
16 really defined "following form," in general
17 industry practice I would say that it does.

18 Q. So this clause means that the
19 facultative certificate effectively adopts
20 all the terms and conditions of the
21 company's underlying policy to the extent
22 not inconsistent with the facultative
23 certificate itself, correct?

24 A. That is as much as what it says
25 here, yes.

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2 Q. Let me ask you to look at
3 paragraph 3, "All claims involving this
4 reinsurance when settled by the company
5 shall be binding on the reinsurer who shall
6 be bound to pay its proportion of such
7 settlement," and it goes on from there.

8 Do you see that?

9 A. I see that, yes.

10 Q. Do you have an understanding of
11 what that clause means?

12 A. That when we settle, "we" being
13 the company, Fireman's Fund, that the
14 reinsurer in this case General Accident
15 OneBeacon is bound by our settlement.

16 Q. Is that settlement subject to the
17 terms and conditions of the underlying
18 policy being satisfied?

19 MS. BASWELL: Objection to form.

20 THE WITNESS: Yes.

21 BY MR. KING:

22 Q. So if -- let me ask you some
23 questions.

24 So if Fireman's Fund were to
25 settle a claim or pay a claim under a policy

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2 that was excluded under that policy and then
3 asked its reinsurer to pay under this
4 facultative certificate, would the reinsurer
5 be bound to pay or not be bound to pay
6 because it wasn't within the policy
7 coverage?

8 MS. BASWELL: Objection. Calls
9 for a legal conclusion.

10 Objection, incomplete
11 hypothetical.

12 THE WITNESS: If you read that
13 back, I am not sure that that is a
14 logical question and I take no offense
15 to that please.

16 BY MR. KING:

17 Q. Let me restate the question.

18 A. Yes.

19 Q. Let's assume that Fireman's Fund
20 pays a claim that is expressly excluded
21 under its policy. Agreed?

22 A. Okay. That part I understand,
23 yes.

24 Q. Then let's assume that Fireman's
25 Fund turns to its reinsurer pursuant to the

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2 terms of the certificate and the attachment
3 point is met and all those other elements of
4 coverage are met and asks OneBeacon to pay
5 under this certificate, is OneBeacon bound
6 to pay pursuant to the terms of this
7 certificate?

8 MS. BASWELL: Objection. Calls
9 for a legal conclusion.

10 THE WITNESS: In this
11 hypothetical that you are presenting,
12 Mitch, who makes the determination
13 that the exclusion precludes coverage?

14 BY MR. KING:

15 Q. Let's assume that the exclusion --
16 that it is excluded as a matter of law and
17 that is not in doubt.

18 A. So there is an exclusion that is
19 as a matter of law would preclude,
20 everything else being satisfied on the
21 policy, and Fireman's Fund settles
22 irregardless of the exclusion being
23 determined by an authoritative court, and
24 then we bill per the terms of this contract?

25 Q. Right.



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2 A. The question being what?

3 Q. Would that be covered under this
4 certificate?

5 MS. BASWELL: Objection. Calls
6 for a legal conclusion.

7 THE WITNESS: No.

8 BY MR. KING:

9 Q. Okay. Let me ask you the same
10 question, let's assume that Fireman's Fund
11 pays a claim which is outside the conditions
12 or a condition of the Fireman's Fund policy,
13 where a condition of the Fireman's Fund
14 policy has not been satisfied. And then
15 asks its reinsurer to pay and there is no
16 question as to the condition not being
17 satisfied. Would this policy -- would this
18 certificate, rather, provide coverage to
19 Fireman's Fund?

20 MS. BASWELL: Objection to form.
21 Calls for a legal conclusion.
22 Incomplete hypothetical.

23 THE WITNESS: Technically your
24 question is very similar to the one
25 that you just asked in a hypothetical

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2 situation, under those provisions only

3 I would say, no.

4 BY MR. KING:

5 Q. Would it be fair to say that this
6 facultative certificate it does not cover ex
7 gratia payments by Fireman's Fund? Do you
8 know what the term "ex gratia" means?

9 A. If you could for the record give a
10 brief definition of what you mean by that?

11 Q. A gratuitous payment that is
12 outside of the coverage policy.

13 A. I would agree the certificate
14 would not cover that.

15 Q. All set for now.

16 Let me ask you to take from
17 yesterday's exhibits Exhibit 27 please.

18 A. I have 27.

19 Q. Exhibit 27 is the "AZOA Resolution
20 Services ASARCO Authority Request" dated
21 July 31, 2008.

22 Have you seen this document
23 before?

24 A. Yes.

25 Q. Did you review this in connection